

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1786 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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AMRUTLAL JAGJIVANDAS SHAH & 1 - Applicant(s)
Versus
RAMNIKLAL JAGJIVANDAS SHAH – Opponent(s)

Appearance :

MR DD VYAS for Petitioner No(s).: 1,2.

None for the Respondent though name of Mr. S.K.Jhaveri appears.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/07/2005

ORAL JUDGMENT

1. Present is a revision petition under Section 29(2) of the Bombay Rent Control Act, against the judgment dated 31st July, 1995 passed in Civil Appeal No. 54 of 1992, by the learned Joint District Judge, confirming the judgment and decree dated 24.9.1992 passed in Civil Suit No. 337 of 1985 by the learned Joint Civil Judge (Junior Division), Surendranagar, directing eviction of the present petitioner. The facts in short are that the landlord-respondent filed a suit for eviction somewhere in the year 1985, submitting, inter alia, that the tenant was liable to be evicted as he was in arrears of rent, he has sub-let the premises or has parted with possession and as he has parted with possession in favour of the petitioner no.2, he is not using the premises for any reasonable

cause therefore he is liable to be evicted. The tenant, so also the sub-tenant were joined as parties, notices were issued to them and they appeared in the Court after receiving the summons. It was submitted by them that they were tenants/sub-tenants, were not in arrears of rent, though there was sub-letting but the landlord has lost his right by lapse of time as the sub-letting was created somewhere in the year 1967 and the suit came to be filed in the year 1985. The submission was that the suit ought to have been filed within a period of three years of accrual of the cause of action and as the suit has been filed almost after 18 years of accrual of the cause of action, the landlord's suit on the cause of sub-letting deserved to be dismissed. Allegation of non-user was also denied.

2. After recording evidence and hearing the parties, the learned trial court held in favour of the landlord on the ground of creation of sub-tenancy or parting with the possession. So far as the plea of non-user was concerned, it was accepted by the

learned trial court that because of parting with the possession, the landlord was not using the premises. The said findings were challenged before the appellate court and as the findings have been confirmed, the dissatisfied tenant is before this Court.

3. Mr. D.D. Vyas, learned counsel for the petitioners has submitted that before the landlord can get a decree on the grounds available under Section 13 [1][e] of the Act, he is required and obliged to prove that the tenancy was unlawful. It was contended that as the cause of action accrued in favour of the landlord somewhere in the year 1967, the suit based on such cause of action for seeking possession from the tenant would not be maintainable either under Article 113 or under Article 120 or Article 67 of the Indian Limitation Act, 1963. Placing his strong reliance upon the judgment of the Supreme Court in the matter of **Shakuntala Vs.Hem Chand reported in AIR 1987 Supreme Court, 1823**, it was contended that if the landlord has lost his right to get a decree or a

relief by lapse or as the action has become barred by limitation, a decree could not be granted. It was also submitted that though the cause of action in the matter of Shakuntala Vs. Hem Sand (supra) was construction of pakka structure, but the same is not going to make any difference, because, in the case on hand, the cause of action had accrued in the year 1967 and there would not be a continuing cause of action. I have heard Mr. Vyas at length.

4. For proper appreciation of the arguments raised by Mr. Vyas, I will have to look into the scheme of the Act. Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 gives protection to the tenant when it says that no ejectment of a tenant would be made if the tenant pays or is ready and willing to pay standard rent and permitted increases. Section 12 is general in nature and provides protection to a tenant if he acts in accordance with law and does not violate the terms of the lease, he is ready and willing to pay the standard rent and the permitted increases.

However, Section-13 is an exception carved out to Section-12. While Section 12 provides protection to a tenant, Section 13 provides grounds to a landlord to evict a tenant, who though was observing conditions as required under Section 12, but is liable to be evicted on happening of an event or on proof of some facts. Section 13 provides that notwithstanding anything contained in the Act, but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied on happening of an event or on proof of some facts. As many as 14 grounds have been provided in favour of the landlord to seek eviction of the tenant. Section 13 [1][e] provides that the landlord shall be entitled to seek eviction of a tenant if the tenant has, since the coming into operation of the Act, **unlawfully sub-let** (emphasis supplied) the whole or part of the premises or assigned or transferred in any other manner his interest therein. The submission of Mr. Vyas is that unless the landlord proves that the premises

have been unlawfully sub-let, the landlord would not be entitled to a decree. The argument cannot be accepted, firstly because, it is not only the unlawful sub-letting, but even an assignment or a transfer in any other manner would also be a ground for eviction of a tenant.

5. It is to be seen that Section 15 of the Act provides that notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful (emphasis supplied) after coming into operation of the Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. Though a proviso has been added to sub-section (1) giving authority to the State Government to permit creation of sub-tenancy by issuing a notification, but incident of the notification is not germane to the facts of the present case, because, that is not the defence.
6. If an action on the part of a tenant in itself is held to be illegal or shall not be deemed to be

lawful or shall be not lawful, then, the moment a landlord shows to the Court that the tenant is not in possession of the property or he has assigned his rights or he has transferred the property in favour of someone, then, he has thrown the ball in the court of the tenant and the tenant will have to show that possession of third party is lawful or creation of sub-tenancy is not contrary to law or the provisions of the Act or assignment or transfer is also not bad.

7. A juxtaposed reading of Sections 13[1][e] and 15 [1] of the Act would make clear that a landlord may come to the Court with an allegation that the premises are not in possession of the tenant, but someone else is holding absolute control and is enjoying possession of the property. The moment these facts are proved to the satisfaction of the Court, it must be noted that the facts are not disputed in this case, the Court would immediately ask the tenant that under what authority of law the tenant has parted with possession or has assigned

his rights or has transferred his rights along with the premises in favour of someone else. It is not expected of a landlord to show to the Court that the tenant has taken some unlawful action for creating unlawful tenancy. A landlord is required to inform the Court that a particular person is the tenant, there was a lease agreement, certain terms are settled and that after coming into force of the Act, a tenant has either sub-let the premises or has parted with possession or has assigned his rights or has transferred the property in favour of someone else. A landlord, it is not expected from him that he would know that on what terms, the tenant has parted with possession or on what basis, possession has been transferred. Where a decree is sought on the ground of Section 13[1][e], the landlord has to satisfy the Court that the tenant has, since after coming into operation of the Rent Act, unlawfully sub-let the premises or any part thereof. The words "has sub-let" are used in present perfect tense and contemplate a completed event connected in some way with the

present time. The moment, a tenant creates sub-tenancy, a ground in fact, accrues in favour of the landlord to seek eviction of the tenant, however, protection to a statutory tenant is available to disprove the allegation. In a given case, the moment a landlord says that the tenant has parted with possession or has sub-let the premises, the fact stands proved. It would be for the tenant to disprove the facts and avoid legal presumptions by leading evidence that he has not sub-let the premises. I am unable to agree with the learned counsel nor I am to hold that a landlord is required to prove that the sub-tenancy is unlawful. When the law says that creation of sub-tenancy shall not be lawful on the part of the tenant, then, it is to be held that that creation itself is unlawful.

8. So far as the judgment in the matter of Shakuntala Vs. Hem Sand (supra) is concerned, that was a case where the Supreme Court was considering the question of raising of permanent construction on

the premises let out by the landlord to the tenant. The trial Judge decreed the suit, the appellate court set aside the decree and the High Court interfered in the writ, the matter went up to the Supreme Court. The question raised before the Supreme Court was that if a cause of action accrues in favour of a landlord to seek eviction of a tenant on a particular date, then, whether a suit can be filed at any time or the Law of Limitation would be applicable, specially in relation to the particular ground or particular cause of action. After taking into consideration the facts of the case, the Supreme Court observed that provisions of Article 67 of the Limitation Act would be applicable and if within 12 years from the date of accrual of the cause of action, a landlord does not bring an action before the court, then his right to seek eviction on the said ground would be lost.

9. It is to be seen in the present matter that the tenant or the sub-tenant never brought to the notice of the landlord that a sub-tenancy was

created. Though a feeble attempt was made at the Bar to say that as the landlord is residing in the same vicinity and had been watching the activity everyday, he was in know of the facts, in my considered opinion, this statement would not be sufficient to constitute a legal and valid information to the landlord. Nobody knows that under what authority of law or under what authority from the landlord someone else is sitting in or is occupying the premises. At this stage, it cannot be lost sight of that the tenant/sub-tenant came out with a plea that there had been a partnership and the petitioner no. 2 was inducted in the partnership as a partner. If this could be one of the valid defence for the tenants, then, this could again be a valid reason for the landlord to say that he did not know the facts and after learning about the truth, he realised that under the garb of the alleged partnership, in fact, a sub-tenancy was created. In a case, where a landlord wants to exercise a forfeiture clause for evicting a tenant, then he has to show to the Court that he learnt

about the particular happening on a particular date and from that particular date, he would be entitled to count the limitation.

10. Even otherwise, it is to be seen that in case of raising pakka construction, the moment construction is completed, a cause of action generates or accrues in favour of the landlord. In case of a sub-tenancy, which is continuing since after its creation, would give continuous cause of action to the landlord. A tenant cannot be allowed to say that though sub-tenancy was created, but after 12 years, it would ripen into a valid sub-tenancy. The judgment in the matter of Shakuntala (supra) was on different facts and cannot be applied to the facts of the present case.

11. As the fact of sub-tenancy is held to be proved by the two courts. Considering the legal aspects and the grounds raised in support of the revision petition, I also hold that creation of sub-tenancy or parting with possession is proved and the tenant has suffered disqualification. Under the circumstances, this Court would not be in a

position to make any interference in the matter. The revision deserves to and is accordingly dismissed. Rule is discharged. Interim relief stands vacated. As none appears to oppose the revision, there shall be no order as to costs.

[R.S. GARG, J.]

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